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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.1554 OF 2007
IN
WRIT PETITION NO.3079 OF 2006

Workmen employed under it
Shramik Sena ... Applicant

V/s.

Raptakos Breet & Co. Ltd ... Respondent

a/w
CIVIL APPLICATION NO.1916 OF 2006
IN
WRIT PETITION NO.3079 OF 2006

Workmen employed under it
Represented by Shramik Sena ... Applicant

V/s.

Raptakos Breet & Co. Ltd ... Respondent

Mr.S.S. Pathak for Applicant
Mr.J.P. Cama with A.K. Jalisatgi and P.N. Anaokar for Respondent

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **AUGUST 10, 2007**

P.C.:

. Civil application No.1916 of 2006 has been filed by the Union representing the workmen claiming wages payable under section 17B of the Industrial Disputes Act for all the workmen listed in Exhibit A to the Civil Application. Civil Application No.1554 of 2007 has also been filed by the Union, the applicant in both the Civil Applications, for a direction against the respondent

company (the petitioner in Writ Petition No.3079 of 2006 in which the present Civil Applications have been filed) to provide regular wages and other benefits which are paid to other employees working with the respondent company.

2. When Civil Application No.1916 of 2006 came up for hearing on 29.8.2006, the learned Single Judge (Marlapalle, J.) observed thus:

> 4. .... The only issue that remains to be sorted out is regarding the wage-scale. The learned counsel for the applicant-Union submitted that on reinstatement the workmen concerned must be paid wages at the rates applicable to the permanent employees of the Company and working in unskilled category. Mr.Anaokar, on the other hand, submitted that though such unskilled employees are on the rolls of the Company, as at present, they are regular employees and if the Company recruits temporary workers for unskilled work, they are paid wages at Rs.2370/- per month, as at present. Mr.Pathak on the other hand claims the right of the workmen to receive wages even for a temporary period at the rates applicable to the unskilled workers presently in the permanent employment of the Company. This issue could be sorted out when the application will be finally decided.
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> 5. For the time being, it is directed that the workmen covered by the award impugned in Writ Petition No.3079 of 2006 shall report for duty from 2nd September, 2006 onwards and they shall be paid a consolidated salary of Rs.2500/- per month or Rs.100/- per day, whatever is applicable. The wages will be directly paid by the Company and this shall be without prejudice to the rights and contentions of the parties in the writ petition. The rate of wages payable for such unskilled work shall be decided in this

application at a later date."

3. Accordingly, the company has been paying the workers listed in annexure A to the Civil Application wages @Rs.2500/- per month as and when work is provided to them. An affidavit has been filed by one Prakash Gomagi Ingole, one of the workers concerned in the Reference. This affidavit has been filed by him on behalf of the other workers as well. He has stated that after the order of 29.8.2006, the company paid him and other workers Rs.2500/- per month only when they were provided work and on the other days an average of Rs.1200/- to Rs.1496/- was paid as wages to the workmen. He has averred in this affidavit that he and the other workmen are doing the same work as the permanent workmen and the permanent workmen are being paid a monthly salary ranging between Rs.6500/- and Rs.7750/-. In these circumstances, the Union has filed Civil Application No.1554 of 2007 claiming the same benefits as the permanent workmen.

4. The learned advocate for the Union submits that under section 17B of the Industrial Disputes Act, when an award in favour of a workman is challenged by the company in the High Court, the workman must be paid wages last drawn by him. He submits that the Supreme Court has interpreted that the term "last drawn wages"

need not be restricted to the wages actually drawn by the workman prior to his termination from service. He submits that now it is open for this Court to grant something more than the last drawn wages.

5. He relies on the judgments in the case of *Regional Authority, Dena Bank & Anr. V/s. Ghanshyam*, **2001 II CLR 901** of the Supreme Court; *Paramjit Singh Ahuja v/s. Presiding Officer, Labour Court VI & Ors*, **2001 (4) LLN 1069,** *Hindalco Industries Ltd. v/s. Suman Lata Tuteja & Ors.,* **2006 (3) LLN 1017** both of the Delhi High Court. He further submits that assuming that the workmen are employed through a contractor, which is the case of the company, the workmen of the contractor would be entitled to the same wages as are payable to the permanent workmen of the company. He relies on the judgment of the Supreme Court in the case of *Food Corporation of Indian v/s. Shyamal K. Chatterjee & Ors.*, **2000 (87) FLR 677** and of the Division Bench of this Court in the case of *Contract Laghu Udhyog Kamgar Union v/s. V.G. Mohite, Assistant Labour Commissioner, Thane & Ors.*, **2001 II CLR 1011**. The learned Advocate then submits that in any event the workmen must be paid wages which would sustain them through the protracted litigation that they have to face.

6. On the other hand, the learned Counsel for the

company submits that by the order of 29.8.2006, this court has already fixed the wages payable to the workmen at Rs.2500/- p.m. Therefore, nothing more needs to be awarded to them in the Civil Application. He submits that the workers enlisted in Exhibit A to the Civil Application No.1916 of 2006 are temporary workmen and such workmen need not be paid the same rates of wages as are payable to the permanent workmen. He then relies on the judgment of the Supreme Court in the case of *State of Haryana v/s. Tilak Raj & Ors.*, **(2003) 6 SCC 123** in support of his submission that these workmen cannot claim parity and equal pay for equal work with the permanent workmen. According to him, the status of both these workmen is different and the applicability of the principle of equal pay for equal work requires complete and wholesale identity between two groups of employees. He also places reliance on the judgment of the Supreme Court in *Mahendra L. Jain & Ors. vs. Indore Development Authority & Ors.*, **2005 I CLR 9** to contend that a workman when employed on a temporary or adhoc basis cannot claim equal pay for equal work as they were not regularised in service.

7. Having considered the submissions made on behalf of both the parties and the judgments relied on by them, in my view, the submission of the learned Counsel for the Company that no further orders regarding payment of

wages be passed after the order of 29.8.2006 cannot be accepted. The order specifically directs that the payment of Rs.2500/- is without prejudice to the rights and contentions of the parties to the writ petition. It also directs that the rate of wages payable for such unskilled work shall be decided in the Civil Application at a later date. Therefore, the workmen are well within their rights to seek a higher amount.

8. However, whether the workmen should be granted anything more than Rs.2500/- will have to be considered. There is no doubt that in the case of Dena Bank (supra), the Supreme Court has observed that while passing the interlocutory order, an amount more than the last drawn wages can be awarded u/s 17B. However, the Supreme Court cautions that when such wages are directed to be paid which are higher than the full wages last drawn, it is necessary to bear the interest of both the parties in mind as the amount paid as wages u/s. 17B is not to be refunded to the employer and in the event the employer succeeds there would be no security for him to recover that amount. The Supreme Court has observed thus:

> We have mentioned above that the import of section 17-B admits of no doubt that Parliament intended that the workman should get the last drawn wages from the date of the award till the

challenge to the award is finally decided which is in accord with the Statement of the Objects and Reasons of the Industrial Disputes (Amendment) Act, 1982, by which section 17-B was inserted in the Act. We have also pointed out above that S.17-B does not preclude the High Courts or this court from granting better benefits-more just and equitable on the facts of a case-than contemplated by that provision to a workman. By interim order the High Court did not grant relief in terms of section 17-B, nay, there is no reference to that section in the orders of the High Court, therefore, in this case the question of payment of "full wages last drawn" to the respondent does not arise. In the light of the above discussion the power of the high Court to pass the impugned order cannot but be upheld so the respondent is entitled to his salary in terms of the said order.

It must, however be pointed out that while passing an interlocutory order the interests of the employer should not be lost sight of. Even though the amount paid by the employer under S.17-B to be workman cannot be directed to be refunded in the event he loses the case in the writ petition (see Dena Bank’s case, 1998 I CLR

> 191 SC = [1998[92 FJR 309 any amount over and above the sum payable under the said provision, has to be refunded by him. It will, therefore, be in the interest of justice to ensure, if the facts of the case so justify, that payment of any amounts over and above the amount payable under section 17-B to him, is ordered to be paid on such terms and conditions as would enable the employer to recover the same."

9. The Delhi High Court in the aforesaid cases has also held that wages which could be paid u/s 17B are the last drawn wages by him which should not be less than the minimum wages applicable from time to time. Thus, keeping in mind these judgments, it must be held that an employee claiming wages payable u/s 17B of the Act must be paid wages which are not less than the minimum wages payable when the order on an application u/s 17B is passed. The only question is if the last drawn wages are less than the minimum wages payable is the employer required to be protected in any manner. In my opinion, the last drawn wages would mean at least the statutory minimum wages payable. Therefore, there is no need to protect the employer by insisting on a security from the workman where only the statutory minimum wages are being paid as wages u/s 17B.

10. The grievance of the Union is that workmen have not been paid Rs.2500/- by the Company as directed by this Court when they were not provided work. As stated earlier, the affidavit of Prakash G. Ingole discloses that only an amount of Rs.1200 to Rs.1496/- per month is paid on an average to these workmen when they are not provided work. This stance adopted by the company, in my view, is incorrect. The company ought to have paid Rs.2500/- whether or not it provided work to the workmen, as per the orders of this Court.

11. The question that now remains is whether the workmen would be entitled to the same wages and benefits as are being paid to the permanent workmen after reinstatement. Instead of paying wages u/s 17B, the employer thought it fit to provide work to the workmen. The contention of the Union is that when such work is provided, the employees must be paid at par with the permanent workmen as the Tribunal has concluded that they are permanent workmen employed for work of a perennial nature. In the case of *Contract Laghu Udhog Kamgar Union (supra)*, the Division Bench of this Court has taken the view that the expression "same kind of work" will mean that the contract labour would have to be classified and paid on the basis of skilled, semi-skilled and unskilled workers just as the permanent workmen. The Supreme Court has also in the case of Food

Corporation of India (supra) held that when it is proved that one set of employees was doing the same work as another set of employees, there must be parity between the wages payable to all the employees. However, in the case of *State of Haryana v/s. Tilak Raj (supra),* the Supreme Court has said that there must be complete and wholesale identity between the two sets of workmen.

12. The company has voluntarily submitted before the Court on August 29, 2006 that it has work available for the workmen covered by the impugned award and they could be assigned unskilled work as loaders, unloaders, peons, helpers, etc. immediately. Once the company has agreed to reinstate the workers instead of paying wages u/s 17B, despite the award being stayed by this Court, it must pay the same wages to the workmen covered by the award as they are paying to other unskilled workmen. The Tribunal has granted the workmen reinstatement with continuity of service and backwages. Thus if the award was not stayed the company would have had to reinstate the workmen and pay wages at par with their other workmen as directed by the Industrial Tribunal. The submission of the learned Counsel for the company is that if the same rates of wages are paid to the workmen covered by the award, there would be no security for the company for refund of the amount if the company succeeds in the petition. He submits that the judgment of the

Supreme Court in the case of Dena Bank Ltd. (supra) clearly mentions that an employer should be protected if wages in excess of the last drawn wages are paid as dues under section 17B. This submission is fallacious as the workmen would be rendering work for the employer and must be paid on that account. The workmen would not be paid the amounts u/s 17B but as remuneration for work done. Therefore, the petitioners must pay to the workmen, covered by the award, the same wages as are being paid to other permanent unskilled workmen.

13. In the circumstances, the following order, in my opinion, would meet the ends of justice:

ORDER

i) As the Company has decided to reinstate the workmen instead of paying dues u/s 17B of the Industrial Disputes Act, the workmen shall be paid wages at par with unskilled permanent workmen or the statutory minimum wages whichever is higher, from the date of this order.

ii) If no work is provided to the workmen by the employer, they shall be paid wages @ Rs.2,500/- per month.

iii) These wages shall be paid by the employer and accepted by the workmen without prejudice to their rights and contentions in the petition.

iv) The arrears payable to the workmen on account of non-payment of wages @ Rs.2500/- per month, when work was not provided to them, after the order of this Court dated 29.8.2006, shall be paid within a period of four weeks from today.

13. Civil Applications are disposed of accordingly.